

## **WASTE DISPOSAL AGREEMENT**

**THIS WASTE DISPOSAL AGREEMENT** is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and between PENOBSCOT ENERGY RECOVERY COMPANY, LIMITED PARTNERSHIP, a Maine limited partnership, and the Municipality of Lamoine, Maine.

### **RECITALS:**

WHEREAS, the Municipality needs a comprehensive, environmentally sound, reliable, long-term management strategy for handling the present and projected volumes of non-hazardous Solid Waste generated within the Municipality;

WHEREAS, it is the policy of the State of Maine, as directed through the State of Maine's adoption of the Solid Waste Hierarchy, to reduce the volume of Solid Waste going into landfills, to recycle Solid Waste whenever possible, and to maximize resource recovery;

WHEREAS, improved waste management within the region of which the Municipality is a part will serve the goals of (1) recovering energy from waste; (2) reducing the indiscriminate disposal of waste; (3) coordinating Solid Waste management among political subdivisions; and (4) developing and maintaining financially secure waste facilities;

WHEREAS, the State of Maine requires that each municipality provide for the disposal of domestic and commercial non-hazardous Solid Waste generated within such municipality;

WHEREAS, Solid Waste issues present communities with serious long-term financial, management, governmental and technical problems in the disposal of Solid Waste;

WHEREAS, the effective management of Solid Waste is crucial to the continued financial well-being of the Municipality and the region of which it is a part;

WHEREAS, PERC owns and operates the PERC Facility that recovers certain recyclable materials and otherwise converts Solid Waste into energy in the Town of Orrington, Penobscot County, Maine;

WHEREAS, the Municipality is willing to commit to delivering to PERC and the PERC Facility the post-recycled Solid Waste generated within the Municipality under its direct control so as to assure the ongoing supply of Solid Waste to the PERC Facility for a fixed period of time as defined below; and

WHEREAS, this Agreement will only become effective upon the satisfaction of certain requirements as provided in Section 5 below.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises of the parties hereto, and the mutual benefits to be gained by the performance hereof, the parties hereto agree as follows:

1.) Definitions. The terms defined in this Section 1 (except as may be otherwise expressly provided in this Agreement or unless the context otherwise requires) shall, for all purposes of this Agreement, have the following respective meanings:

(a) Acceptable Waste. The term “Acceptable Waste” shall mean all combustible Solid Waste that the Municipality shall deliver, or cause to be delivered, to the PERC Facility for disposal as may be limited by federal, state, and local laws, ordinances, permits, regulations, approvals and restrictions as they may apply to the receiving facility except for the following:

- (1) demolition or construction debris from building and roadway projects or locations;
- (2) liquid wastes or sludges;
- (3) abandoned or junk vehicles;
- (4) Unacceptable Waste;
- (5) dead animals or portions thereof or other pathological wastes;
- (6) water treatment facility residues;
- (7) tree stumps;
- (8) tannery sludge;
- (9) waste oil;
- (10) discarded white goods such as freezers, refrigerators, washing machines, etc.;
- (11) electronic waste including, without limitation, television sets, computers, computer monitors, and computer accessories) all as determined by PERC from time-to-time;
- (12) Acceptable Waste that, in the reasonable judgment of PERC and based solely upon a visual inspection of the Acceptable Waste, has a BTU content of not less than four thousand (4,000) BTUs per pound unless the Acceptable Waste fails to meet the aforementioned BTU minimum requirement solely because of the moisture content of such Acceptable Waste and such moisture content is due primarily to abnormally wet weather conditions; or
- (13) Solid Waste which, in the reasonable judgment of PERC and based upon a visual inspection at the time of deliver, could, if processed, result in (a) damage to the PERC Facility, (b) the interruption of normal operations of

the PERC Facility, or (c) PERC incurring extraordinary processing or maintenance costs.

(b) Agreement. The term “Agreement” shall mean this Waste Disposal Agreement as amended from time to time and any successors hereto.

(c) Control. The term “Control” shall mean, for the purposes of the delivery of Acceptable Solid Waste by the Municipality to the PERC Facility, Acceptable Waste that is collected and delivered directly by the Municipality, its employees or agents, or by a hauler under contract with, and at the direction of, the Municipality.

(d) Municipality. The term “Municipality” shall mean the Town of Lamoine.

(e) PERC. The term “PERC” shall mean Penobscot Energy Recovery Company, Limited Partnership, a Maine limited partnership.

(f) PERC Facility. The term “PERC Facility” shall mean that certain waste-to-energy facility owned by PERC and located on Industrial Way in Orrington, Maine.

(g) Solid Waste. The term “Solid Waste” shall mean non-hazardous solid materials with insufficient liquid content to be free-flowing which are of no value to the immediate source from which they emanate as evidenced by their disposal, discard, or abandonment without consideration in return including, but not limited to, ordinary household, municipal, institutional, and commercial wastes, all as may be defined or limited by applicable federal, state and local laws, ordinances, permits, regulations, licenses, approvals, and restrictions.

(h) Solid Waste Hierarchy. The term “Solid Waste Hierarchy” shall mean the enunciated state government priorities with respect to the generation and disposal of solid waste within the State of Maine as set forth in 38 M.R.S. §1302 or any successor thereto.

(i) Term. The term “Term” shall have the meaning specified in Section 6.

(j) Tipping Fee. The term “Tipping Fee” shall have the meaning specified in Section 3(c) below.

(k) Transportation Vehicles. The term “Transportation Vehicles” shall mean motorized vehicles necessary for the Municipality to transport (or cause to be transported) the Acceptable Waste to the PERC Facility including, without limitation, tractors, trailers, and “packer” trucks (front load and rear load), all of which must be self-unloading.

(l) Unacceptable Waste. The term “Unacceptable Waste” shall mean all Solid Waste that is not Acceptable Waste including, without limitation, (a) any material that by reason of its composition, characteristics or quantity is ineligible for disposal at the facility in question pursuant to any applicable federal, state or local laws, rules, regulations, or permits; (b) hazardous, toxic, radioactive, hospital or laboratory wastes or substances; or (c) any other material that the receiving party reasonably concludes would require special

handling outside the normal course or presents an endangerment to its facility, the public health or safety, or the environment.

2.) Representations and Warranties. Each party hereto represents and warrants to the others that:

- (a) it is duly organized, validly existing, and qualified to do business and is in good standing in every jurisdiction in which this Agreement requires its performance;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- (c) the execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action by such party;
- (d) the execution and delivery of this Agreement by such party and the performance of the terms, covenants and conditions contained herein will not violate the articles of incorporation or by-laws (or other constituent documents) of such party, or any order of a court or arbitrator, and will not conflict with and will not constitute a material breach of, or default under, the provisions of any material contract by which such party is bound;
- (e) it and any subcontractors have all necessary permits, licenses and other forms of documentation, and its personnel have received all necessary training including, but not limited to, health and safety training, required to perform its respective obligations hereunder; and
- (f) These warranties shall survive the expiration or earlier termination of this Agreement.

3.) Municipality Delivery Obligations. During the Term, the Municipality agrees to the following:

- (a) The Municipality shall deliver all Acceptable Waste under its Control that is generated within the Municipality to the PERC Facility. The Municipality further agrees that it will not deliver Acceptable Waste collected by the Municipality to any landfill, or other solid waste disposal facility, except in instances where it first obtains prior written consent from PERC to do so. Furthermore, in the event that the Municipality uses a transfer station (or any other type of unloading, loading or transloading facility), Municipality acknowledges that Municipality is obligated to ensure that any Solid Waste under its Control delivered to such transfer station shall be delivered to the PERC Facility. The Municipality agrees to use its best efforts to avoid delivering any Unacceptable Waste to the PERC Facility and shall not knowingly mix any Unacceptable Waste with Acceptable Waste.
- (b) The Municipality acknowledges and agrees that the Municipality (or a hauler or other designated representative hired by the Municipality) may be denied entrance to the PERC Facility (or to a transfer station serving the PERC Facility) by PERC if Solid Waste is delivered at any time other than the PERC Facility's (or transfer station's) standard

receiving hours or if the Municipality has not paid the Tipping Fee, or if PERC has a reasonable basis to believe that a vehicle contains Unacceptable Waste.

(c) The Municipality shall pay to PERC the tipping fee (the "Tipping Fee") for each ton of Solid Waste delivered by the Municipality to the PERC Facility as described on Schedule A which is attached hereto and incorporated herein by reference.

4.) PERC's Obligations. During the Term, PERC agrees to the following:

(a) PERC will accept all of the Acceptable Waste delivered by the Municipality (or by a hauler under contract with, and at the direction of, the Municipality) to the PERC Facility.

(b) That PERC currently has, and shall have throughout the Term, the ability and capacity to accept the Acceptable Waste.

(c) Deliveries by the Municipality to the PERC Facility of the Acceptable Waste shall be recorded separately. Unless otherwise agreed to by the parties hereto, each incoming Transportation Vehicle shall be labeled with a unique vehicle number and hauler code. Each incoming Transportation Vehicle shall be individually weighed at the time of arrival at the PERC Facility to determine the incoming Transportation Vehicle's gross truck weight. After being unloaded, but prior to departing from the PERC Facility, the incoming Transportation Vehicle shall be weighed empty at the PERC Facility to determine its tare weight (to the nearest hundredth of a ton).

(d) A multi-part weigh ticket shall be produced for each such incoming Transportation Vehicle which weigh ticket shall show (1) the incoming Transportation Vehicle's tare and gross truck weights, (2) the number of tons of Acceptable Waste being delivered to the PERC Facility by the incoming Transportation Vehicle (to the nearest hundredth of a ton), (3) the time of the delivery, and (4) the incoming Transportation Vehicle's vehicle identification number. The weigh ticket shall be signed by PERC's scale house operator and the driver of the incoming Transportation Vehicle. PERC and the driver shall each receive a copy of the weigh ticket.

(e) PERC shall retain all weigh tickets for a period of not less than three (3) years. The weight record shall be used by PERC as the basis for invoicing the Municipality. The Municipality (or any other person acting as the agent for, and at the direction of the Municipality) shall have the right to inspect PERC's weight records of Acceptable Waste deliveries upon reasonable written request. Such inspections shall be conducted during business hours in such a manner as to not unreasonably interfere with PERC's business operations.

(f) PERC shall submit a weekly invoice to the Municipality indicating (i) the number of tons of Acceptable Waste disposed of at the PERC Facility during the prior week; and (ii) the fees due therefor pursuant to Section 3. All such invoices shall be due and payable by the Municipality within thirty (30) days from the date of the invoice.

5.) Necessity of Delivery Obligations. Both the Municipality and PERC acknowledge and agree that this Agreement is being signed so that (a) the Municipality can be assured of

continuing the Municipality's comprehensive and environmentally sound disposal of its non-hazardous Solid Waste generated within the Municipality and that is under its direct Control; and (b) PERC can be assured of a steady supply of post-recycled Solid Waste from the Municipality to the PERC Facility for a fixed period. After signing this Agreement, both the Municipality and PERC acknowledge and agree that PERC needs to receive commitments for the delivery and receipt of Acceptable Solid Waste from other municipalities and private businesses so as to assure the continued operation of the PERC Facility. PERC and the Municipality acknowledge and agree that the above-described necessary commitments for delivery and receipt of Acceptable Solid Waste from other municipalities and private businesses to assure the continued operation of the PERC Facility must occur on or before February 18, 2017 and must equal, in the aggregate, one hundred eighty thousand (180,000) tons per year.

6.) Term. The Term of this Agreement shall begin on April 1, 2018 and shall expire on the date specified in Schedule A (including any renewals thereof as provided in Schedule A) unless earlier terminated as provided herein (the "Term").

7.) Termination. The parties hereto acknowledge and agree that this Agreement shall terminate as follows:

- (a) Except as provide in Schedule A (relating to the automatic renewal of the Agreement), upon the expiration of the Term; or
- (b) Upon mutual written agreement of the Municipality and PERC; or
- (c) By either party by providing written notice to the other party if the other party commits a material breach of this Agreement, and the breach is not cured within sixty (60) days after receipt of written notice from the party not in breach, stating the nature of the breach; or
- (d) In the event of a "Deemed Termination" by the Municipality as that term is defined in Schedule A; or
- (e) By either party, in the event that PERC does not receive written commitments for the delivery of Acceptable Solid Waste as provided in Section 5 above;
- (f) By either party, in the event that there is a delay in either party's performance of its obligation hereunder as provided in Section 10(f) hereunder; or
- (g) By either party by providing written notice to the other party in the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against the other party, or the appointment with or without such other party's consent of an assignee for the benefit of creditors or of a receiver for such other party, or the going into liquidation voluntarily or otherwise for the making of a composition with creditors of such other party.

8.) Indemnification. PERC agrees to indemnify, defend and hold harmless the Municipality and its managers, employees and agents, and the Municipality agrees to indemnify, defend and hold harmless PERC and its directors, officers, owners, managers, employees and agents, from and against all loss, liability, damage and expense (including attorneys' fees and

expenses incurred in enforcing this indemnification), arising out of or relating to (i) any breach by an indemnifying party of this Agreement, (ii) any negligent or willful act or omission of an indemnifying party, or (iii) any violation by an indemnifying party of applicable laws, regulations, permits or licenses. The indemnifying party shall be entitled to control (at its sole expense) the defense of any claim, action, suit or proceeding giving rise to an obligation of such indemnifying party to provide indemnification under this Section 8; provided, however, that no settlement thereof may be entered into without the written consent of the indemnifying party and the indemnified party, which consent shall not be unreasonably withheld, delayed or conditioned. Nothing in this Agreement shall constitute a waiver or diminution by the Municipality of any immunities or statutory limitations on liability under Maine law, nor shall anything in this Agreement be construed to constitute a waiver of any defense, immunity or limitation of liability that may be available to a governmental entity or any of its officers, officials, agents or employees pursuant to any applicable State or Federal statutory law, common law or any privileges or immunities as may be provided by law.

9.) Municipal Outreach Meetings. Effective as of April 1, 2018, PERC shall schedule and conduct, at least once in any 12-month period and more often on an as-needed basis, meetings between the PERC management and all non-owner municipal customers for the specific purpose of allowing the exchange of information concerning the operation of PERC and to provide a means for the municipal customers to provide input to the PERC management relative to those operational issues. Written notice of the scheduling of all such meetings shall be issued at least 15 calendar days before any such meeting through notices mailed to the municipal customer at its last designated contact address as provided herein.

10.) Miscellaneous.

(a) Notices. All notices to be given under this Agreement shall be in writing and delivered personally, or shall be mailed by U.S. Express, registered or certified mail, return receipt requested or an overnight service with receipt as follows:

PERC	Penobscot Energy Recovery Company, Limited Partnership 29 Industrial Way Orrington, Maine 04474 Attn: John Noer
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The Municipality	Town of Lamoine 606 Douglas Highway Lamoine, ME 04605 Attn:
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(b) Governing Law. This Agreement and any issues arising hereunder or relating hereto shall be governed by and construed in accordance with the laws of the State of Maine except for conflicts of laws provisions that would apply the substantive law of another state.

(c) Venue. The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the state and federal courts having jurisdiction over the parties hereto.

(d) Limitation of Liability. Except for damages resulting from fraud, neither party shall be liable to the other for special, incidental, exemplary, punitive or consequential damages including without limitation loss of use, loss of profits or revenues, or cost of substitute or re-performed services, suffered, asserted or alleged by either party or any third party arising from or relating to this Agreement, regardless of whether those damages are claimed under contract, warranty, indemnity, tort or any other theory at law or in equity.

(e) Disclaimer of Joint Venture, Partnership, and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the parties or to impose any partnership obligation or liability upon either party. Neither party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other party.

(f) Force Majeure.

- (1) “Force Majeure” shall mean any act, event or condition materially and adversely affecting the ability of a party to perform or comply with any material obligation, duty or agreement required under this Agreement, if such act, event, or condition is beyond the reasonable control of the nonperforming party or its agents relying thereon, is not the result of the willful or negligent action, inaction or fault of the party relying thereon, and the nonperforming party has been unable to avoid or overcome the act, event or condition by the exercise of due diligence, including, without limitation:  
(i) an act of God, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (ii) an act of public enemy, war, blockage, insurrection, riot, general unrest or restraint of government and people, civil disturbance or disobedience, sabotage, act of terrorism or similar occurrence; (iii) a strike, work slowdown, or similar industrial or labor action; (iv) an order or judgment (including without limitation a temporary restraining order, temporary injunction, preliminary injunction, permanent injunction, or cease and desist order) or other act of any federal, state, county or local court, administrative agency or governmental office or body which prevents a party’s obligations as contemplated by this Agreement; or (v) adoption or change (including a change in interpretation or enforcement) of any federal, state or local law after the Execution Date of this Agreement, preventing performance of or compliance with the obligations hereunder.
- (2) Neither party shall be liable to the other for damages without limitation (including liquidated damages) if and to the extent such party’s performance is delayed or prevented due to an event of Force Majeure. In such event, the affected party shall promptly notify the other of the event of Force



Majeure and its likely duration. During the continuation of the Force Majeure Event, the nonperforming party shall (i) exercise commercially reasonable efforts to mitigate or limit damages to the performing party; (ii) exercise commercially reasonable due diligence to overcome the Force Majeure event; (iii) to the extent it is able, continue to perform its obligations under this Agreement; and (iv) cause the suspension of performance to be of no greater scope and no longer duration than the Force Majeure event requires.

- (3) In the event of a delay in either party's performance of its obligation hereunder for more than sixty (60) days due to a Force Majeure, the other party may, at any time thereafter during the continuation of delayed performance, terminate this Agreement.

(g) Entire Agreement. It is understood and agreed that all understandings and agreements heretofore had among the parties hereto related to the subject matter of this Agreement are merged in this Agreement, which alone fully and completely expresses their agreement and contains all of the terms agreed upon among the parties hereto with respect to the subject matter of this Agreement, and that this Agreement is entered into after full investigation, no party relying upon any statement or representation, not embodied in this Agreement, made by any other. All exhibits, schedules and other attachments are a part of this Agreement and the contents thereof are incorporated herein by reference.

(h) Amendment. This Agreement cannot be amended, modified or supplemented, nor can any term or condition be waived in whole or in part, except in writing and signed by all of the parties hereto.

(i) Non-Waiver. No waiver by any party to this Agreement of any failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent failure or refusal to so comply. No waiver by any party hereto of any right or remedy hereunder shall be valid unless the same shall be in writing and signed by such party giving such waiver. No waiver by any party hereto with respect to any default, misrepresentation, or breach of warranty or covenant hereunder shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

(j) Severability; Modification Required By Law. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions thereof or hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreement of the parties herein set forth.

(k) Headings. The headings of sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

(l) Successors and Assigns. This Agreement and all of the provisions thereof and hereof shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

(m) Assignment. Neither this Agreement nor any of the rights, interests, obligations, and remedies hereunder shall be assigned by any party, including by operation of law, without the prior written consent of the other parties, such consent to not be unreasonably withheld, conditioned or delayed, except (a) to its parents, subsidiaries and affiliates provided that the assigning party shall remain liable for all of the obligations hereunder, (b) at its expense to a person, firm, or corporation acquiring all or substantially all of the business and assets of the assigning party provided that the assignee assumes the obligations of the assigning party arising hereunder from and after the date of acquisition, and (c) as security to entities providing financing for the assigning party or for any of its affiliates or for construction, reconstruction, modification, replacement or operation of any of the facilities of the assigning party or its parents, subsidiaries or affiliates.

(n) Construction. This Agreement and its exhibits and schedules are the result of negotiations between the parties and have been reviewed by all parties. Accordingly, this Agreement will be deemed to be the product of the parties thereto and no ambiguity will be construed in favor of or against any party.

(o) No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(p) No Brokers. The parties agree that they have entered into this Agreement without the benefit or assistance of any brokers, and each party agrees to indemnify, defend and hold the other harmless from any and all costs, expenses, losses or liabilities arising out of any claim by any person or entity that such person or entity acted as or was retained by the indemnifying party as a finder or broker with respect to the sale of the assets described herein.

(q) Further Acts. Each party agrees to perform any further acts and to execute, acknowledge, and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

(r) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which together will constitute one and the same instrument.

PERC:

THE PENOBSCOT ENERGY RECOVERY  
COMPANY, LIMITED PARTNERSHIP

By: USA Energy Group, LLC  
Its: General Partner

By: \_\_\_\_\_  
Its: President

MUNICIPALITY:

TOWN OF LAMOINE

By: \_\_\_\_\_  
Gary McFarland  
Its: Selectman, duly authorized

By: \_\_\_\_\_  
S. Josephine Cooper  
Its: Selectman, duly authorized

By: \_\_\_\_\_  
Kathleen Rybarz  
Its: Selectman, duly authorized

By: \_\_\_\_\_  
Robert Christie  
Its: Selectman, duly authorized

By: \_\_\_\_\_  
Nathan Mason  
Its: Selectman, duly authorized